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DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-202865

DATE: February 9, 1982

MATTER OF: Mr. Warren E. Pendleton

DIGEST: Employee of Department of the Army stationed in Saudi Arabia, whose married daughter and grandchild lived with him, may not be reimbursed for their travel to the United States by commercial air in lieu of space-available Government aircraft incident to his change-of-station transfer. While it is not clear why they were denied space-available transportation, at no cost, the law limits the entitlement of an employee to the transportation expenses for his immediate family in connection with a change of station. Para. 2-1.4d of the Federal Travel Regulations (FTR) defines immediate family for purposes of authorizing travel and since neither the daughter nor the grandchild come within this definition no entitlement to reimbursement for the costs of their transportation exists.

This action responds to a letter dated February 28, 1981, with enclosures, from Mr. Warren E. Pendleton, a civilian employee of the Department of the Army, concerning his entitlement to be reimbursed for the cost of transporting his daughter and granddaughter from Saudi Arabia to New York incident to a permanent change-of-station move in September 1979. Mr. Pendleton may not be reimbursed by the United States for this expense.

Our Claims Group disallowed his claim by settlement dated January 22, 1981, based on a finding that neither his daughter nor his granddaughter qualified as part of his immediate family under the regulations which authorize transportation at Government expense.

In response, Mr. Pendleton contends that Department of Defense regulations governing transportation on a space-available basis, in effect, do not require that a close-blood or affinitive relative be a dependent or part of

an employee's family as defined in the Federal Travel Regulations for the purposes of space-available transportation. He argues that the regulations require only that the person be his close-blood or affinitive relative in order for this eligibility to exist. Since his daughter and granddaughter were living with him in Saudi Arabia and were in fact dependent on him he feels that they should not have been forced to use commercial transportation for the overseas portion of their return travel.

Space-available transportation on Government-owned or controlled aircraft for close-blood or affinitive relatives dependent on the employee is a permissible privilege. From the information presented, it is not clear why Mr. Pendleton's daughter and granddaughter were refused space-available transportation. Whether or not they should have been authorized to travel on a space-available basis has no bearing on his entitlement to reimbursement since the fact remains that they did travel by commercial transportation. As a result any entitlement Mr. Pendleton has to reimbursement is governed by the provisions 5 U.S.C. 5724 and implementing regulations.

That section provides in part as follows:

"(a) Under such regulations as the President may prescribe and when the head of the agency concerned or his designee authorizes or approves, the agency shall pay from Government funds--

"(1) the travel expenses of an employee transferred in the interest of the Government from one official station or agency to another for permanent duty, and the transportation expenses of his immediate family * * *."

Under a delegation of authority from the President, the Administrator of General Services was authorized to prescribe regulations necessary to implement these provisions, which

are contained in the Federal Travel Regulations (FTR) (FPMR 101-7, May 1973).

Section 2-1.4d FTR (FPMR Temp. Reg. A-11, Supp. 4, April 29, 1977), defines immediate family for transportation entitlement purposes as follows:

"d. Immediate family.

"(1) Any of the following named members of the employee's household at the time he * * * performs authorized or approved overseas tour renewed travel or separation travel;

"(a) Spouse;

"(b) Children of the employee or employee's spouse who are unmarried and under 21 years of age or who regardless of age, are physically or mentally incapable of self-support (The term 'children' shall include natural offspring * * * and grandchildren, * * * who are under legal guardianship of the employee or employee's spouse.) * * *."

Under this definition, a child or a grandchild of an employee qualifies as a member of the employee's "immediate family" if they are a "member of the employee's household" at the time authorized travel is performed and their status comes within the limitations stated therein. Thus, in order for children who are members of the household to be considered members of the "immediate family," they must be unmarried and under age 21, unless physically or mentally incapable of self-support (which is not the case here). As for grandchildren, in addition to the foregoing, there must be a legal guardianship relationship in the employee or his spouse before transportation at Government expense is authorized.

Since neither Mr. Pendleton's daughter nor his granddaughter qualify as members of his immediate family under

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the regulation, no authority exists to reimburse him for the cost of their transportation. See B-156327, March 24, 1965; and B-170774, December 7, 1970.

While it is unfortunate that they were not authorized to travel on a space-available basis we have no alternative but to deny his claim. Accordingly, the action of our Claims Group is sustained.

for *Milton J. Fowler*
Comptroller General
of the United States